

AMENDED IN ASSEMBLY AUGUST 30, 2005

SENATE BILL

No. 365

Introduced by Senator Ducheny
(Coauthor: Senator Ortiz)
(Coauthor: Assembly Member Jones)

February 17, 2005

~~An act to amend Sections 65589.4 and 65589.7 of the Government Code, relating to housing.~~ *An act to repeal and add Section 6307 of the Public Resources Code, relating to tidelands and submerged lands, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 365, as amended, Ducheny. ~~Affordable housing.~~ *Tidelands and submerged lands.*

(1) *Existing law authorizes the State Lands Commission, whenever it appears to the commission to be in the best interests of the state, for the improvement of navigation, to aid in reclamation, for flood control protection, or to enhance the configuration of the shoreline, and that it will not substantially interfere with the right of navigation and fishing in the waters involved, to exchange filled or unfilled lands of equal value, as specified. Existing law provides that the lands exchanged may be released from the public trust for navigation and fishing, as specified.*

This bill, instead, would allow the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in those lands, if the commission finds that specified conditions are met.

(2) *This bill would declare that it is to take effect immediately as an urgency statute.*

~~(1) The Planning and Zoning Law requires that a multifamily residential housing project is a permitted use not subject to a conditional use permit on any parcel zoned for multifamily housing if specified requirements are satisfied. The Planning and Zone Law also requires that each public agency or private entity that provides water services at retail or sewer services be granted a priority for the provision of available and future resources or services to proposed housing developments that help meet the city's, county's, or city and county's share of the regional housing need for lower income households as identified in the housing element adopted by the local legislative body and any amendments made to that element.~~

~~This bill would expressly make these provisions applicable to charter cities. By increasing the duties of local public officials, the bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Section 25 of Article I and Sections 3 and 4 of Article X of*
- 4 *the California Constitution were adopted to protect and promote*
- 5 *public access to the state's waterways.*
- 6 (b) *The state's sovereign interests in tidelands, submerged*
- 7 *lands, and the beds of nontidal navigable waters, whether filled*
- 8 *or unfilled, are entrusted to the State Lands Commission to be*
- 9 *protected as public trust lands pursuant to the California*
- 10 *Constitution and the common law public trust doctrine.*
- 11 (c) *As trustee of public trust lands, the commission has a duty*
- 12 *to protect and promote the public's access to and use of these*

1 *lands for trust purposes, including commerce, navigation, and*
2 *fishing.*

3 *(d) As trustee of public trust lands, the commission also has a*
4 *duty to protect and promote other public trust values, such as*
5 *preserving waterways and adjacent lands in their natural state as*
6 *open space and as environments that provide food and habitat*
7 *for wildlife.*

8 *(e) Since 1850, many of the lands in and along the state's*
9 *waterways have been altered by natural or human actions*
10 *changing the location of the waterways and their shorelines.*
11 *Thus, in some areas current conditions no longer reflect the*
12 *ownership and boundaries of the waterways and adjacent*
13 *uplands, leaving parcels of land with little or no utility for public*
14 *trust purposes, while other lands can be used more effectively for*
15 *public trust purposes.*

16 *(f) Waterways and lands nearby are often subject to*
17 *unresolved boundary and title issues that impair the use of public*
18 *lands for public trust purposes and burden other lands with a*
19 *cloud on the title.*

20 *(g) In certain cases, and with appropriate findings, it will*
21 *further public trust purposes to acquire lands not currently*
22 *subject to the public trust or to settle title to lands subject to*
23 *conflicting title claims.*

24 *(h) To provide the commission with the necessary authority to*
25 *address these situations and continue to implement the authority*
26 *set forth in Division 7 (commencing with Section 8600) of the*
27 *Public Resources Code, without resort to protracted and costly*
28 *litigation, and to promote public trust values and uses and public*
29 *access to the state's waterways, the Legislature finds it necessary*
30 *to reenact Section 6307 of the Public Resources Code as*
31 *provided in Section 3 of this act.*

32 *SEC. 2. Section 6307 of the Public Resources Code is*
33 *repealed.*

34 ~~6307. Whenever it appears to the commission to be in the~~
35 ~~best interests of the state, for the improvement of navigation, aid~~
36 ~~in reclamation, or for flood control protection, or to enhance the~~
37 ~~configuration of the shoreline for the improvement of the water~~
38 ~~and upland, on navigable rivers, sloughs, streams, lakes, bays,~~
39 ~~estuaries, inlets, or straits, and that it will not substantially~~
40 ~~interfere with the right of navigation and fishing in the waters~~

involved, the commission may exchange lands of equal value, whether filled or unfilled with any state agency, political subdivision, person, or the United States or any agency thereof. Any land so acquired shall have the same status as to administration, control and disposition as the lands for which it was exchanged. The state may release the mineral rights in the land conveyed, as provided in Section 6401, if it receives the mineral rights in the land conveyed to it. The lands exchanged may be improved, filled, and reclaimed by the grantee, and upon the adoption of a resolution by the State Lands Commission finding and declaring that such lands have been improved, filled, and reclaimed, and have thereby been excluded from the public channels and are no longer available or useful or susceptible of being used for navigation and fishing, and are no longer in fact tidelands or submerged lands, such lands shall thereupon be free from the public trust for navigation and fishing. The grantee of any such lands conveyed by the state may bring a quiet title action under the provisions of Chapter 7 (commencing with Section 6461) of this part.

SEC. 3. Section 6307 is added to the Public Resources Code, to read:

6307. (a) The commission may enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that all of the following conditions are met:

(1) The exchange is for one or more of the purposes listed in subdivision (c).

(2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.

(3) The exchange does not substantially interfere with public rights of navigation and fishing.

(4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.

(5) The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having

1 *been filled or reclaimed, and are relatively useless for public*
2 *trust purposes.*

3 *(6) The exchange is in the best interests of the state.*

4 *(b) Pursuant to an exchange agreement, the commission may*
5 *free the lands or interest in lands given in exchange from the*
6 *public trust and shall impose the public trust on the lands or*
7 *interests in lands received in exchange.*

8 *(c) An exchange made by the commission pursuant to*
9 *subdivision (a) shall be for one or more of the following*
10 *purposes, as determined by the commission:*

11 *(1) To improve navigation or waterways.*

12 *(2) To aid in reclamation or flood control.*

13 *(3) To enhance the physical configuration of the shoreline or*
14 *trust land ownership.*

15 *(4) To enhance public access to or along the water.*

16 *(5) To enhance waterfront and nearshore development or*
17 *redevelopment for public trust purposes.*

18 *(6) To preserve, enhance, or create wetlands, riparian or*
19 *littoral habitat, or open space.*

20 *(7) To resolve boundary or title disputes.*

21 *(d) The commission may release the mineral rights in the*
22 *lands or interests in lands given in exchange if it obtains the*
23 *mineral rights in the lands or interests in lands received in*
24 *exchange.*

25 *(e) The grantee of any lands or interests in lands given in*
26 *exchange may bring a quiet title action under Chapter 7*
27 *(commencing with Section 6461) of Part 1 of Division 6 of this*
28 *code or Chapter 4 (commencing with Section 760.010) of Title 10*
29 *of Part 2 of the Code of Civil Procedure.*

30 *SEC. 4. This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety*
32 *within the meaning of Article IV of the Constitution and shall go*
33 *into immediate effect. The facts constituting the necessity are:*

34 *In order to recognize the benefits to the public trust from*
35 *enhancing the configuration of public ownership of and the*
36 *improvement of public access to and along the shoreline for*
37 *public trust uses, and to clarify the authority of the State Lands*
38 *Commission to conduct exchanges involving major projects*
39 *throughout the state, some of which involve hazardous waste*
40 *sites, that could otherwise be mired in costly and protracted*

1 *litigation or otherwise delayed, it is necessary that this act take*
2 *effect immediately.*

3 ~~SECTION 1. Section 65589.4 of the Government Code is~~
4 ~~amended to read:~~

5 ~~65589.4. (a) A multifamily residential housing project shall~~
6 ~~be a permitted use not subject to a conditional use permit on any~~
7 ~~parcel zoned for multifamily housing if it satisfies the~~
8 ~~requirements of subdivision (b) and either of the following:~~

9 ~~(1) The project satisfies the criteria of Section 21159.22,~~
10 ~~21159.23, or 21159.24 of the Public Resources Code.~~

11 ~~(2) The project meets all of the following criteria:~~

12 ~~(A) The project is subject to a discretionary decision other~~
13 ~~than a conditional use permit and a negative declaration or~~
14 ~~mitigated negative declaration has been adopted for the project~~
15 ~~under the California Environmental Quality Act (Division 13~~
16 ~~(commencing with Section 21000) of the Public Resources~~
17 ~~Code). If no public hearing is held with respect to the~~
18 ~~discretionary decision, then the negative declaration or mitigated~~
19 ~~negative declaration for the project may be adopted only after a~~
20 ~~public hearing to receive comments on the negative declaration~~
21 ~~or mitigated negative declaration.~~

22 ~~(B) The project is consistent with both the jurisdiction's~~
23 ~~zoning ordinance and general plan as it existed on the date the~~
24 ~~application was deemed complete, except that a project shall not~~
25 ~~be deemed to be inconsistent with the zoning designation for the~~
26 ~~site if that zoning designation is inconsistent with the general~~
27 ~~plan only because the project site has not been rezoned to~~
28 ~~conform with a more recently adopted general plan.~~

29 ~~(C) The project is located in an area that is covered by one of~~
30 ~~the following documents that has been adopted by the~~
31 ~~jurisdiction within five years of the date the application for the~~
32 ~~project was deemed complete:~~

33 ~~(i) A general plan.~~

34 ~~(ii) A revision or update to the general plan that includes at~~
35 ~~least the land use and circulation elements.~~

36 ~~(iii) An applicable community plan.~~

37 ~~(iv) An applicable specific plan.~~

38 ~~(D) The project consists of not more than 100 residential units~~
39 ~~with a minimum density of not less than 12 units per acre.~~

1 ~~(E) The project is located in an urbanized area as defined in~~
2 ~~Section 21071 of the Public Resources Code or within a~~
3 ~~census-defined place with population density of at least 5,000~~
4 ~~persons per square mile or, if the project consists of 50 or fewer~~
5 ~~units, within an incorporated city with a population density of at~~
6 ~~least 2,500 persons per square mile and a total population of at~~
7 ~~least 25,000 persons.~~

8 ~~(F) The project is located on an infill site as defined in Section~~
9 ~~21061.0.5 of the Public Resources Code.~~

10 ~~(b) At least 10 percent of the units of the project shall be~~
11 ~~available at affordable housing cost to very low income~~
12 ~~households, as defined in Section 50105 of the Health and Safety~~
13 ~~Code, or at least 20 percent of the units of the housing~~
14 ~~development shall be available at affordable housing cost to~~
15 ~~lower income households, as defined in Section 50079.5 of the~~
16 ~~Health and Safety Code, or at least 50 percent of the units of the~~
17 ~~housing development available at affordable housing cost to~~
18 ~~moderate-income households, consistent with Section 50052.5 of~~
19 ~~the Health and Safety Code. The developer of the project shall~~
20 ~~provide sufficient legal commitments to the local agency to~~
21 ~~ensure the continued availability and use of the housing units for~~
22 ~~very low, low-, or moderate-income households for a period of at~~
23 ~~least 30 years.~~

24 ~~(c) Nothing in this section shall prohibit a local agency from~~
25 ~~applying design and site review standards in existence on the~~
26 ~~date the application was deemed complete.~~

27 ~~(d) The provisions of this section are independent of any~~
28 ~~obligation of a jurisdiction pursuant to subdivision (c) of Section~~
29 ~~65583 to identify multifamily sites developable by right.~~

30 ~~(e) This section does not apply to the issuance of coastal~~
31 ~~development permits pursuant to the California Coastal Act~~
32 ~~(Division 20 (commencing with Section 30000) of the Public~~
33 ~~Resources Code).~~

34 ~~(f) The Legislature finds and declares that this section shall be~~
35 ~~applicable to all cities and counties, including charter cities,~~
36 ~~because the Legislature finds that the lack of affordable housing~~
37 ~~is of vital statewide importance.~~

38 ~~SEC. 2. Section 65589.7 of the Government Code is amended~~
39 ~~to read:~~

~~65589.7. (a) The housing element adopted by the legislative body and any amendments made to that element shall be delivered to all public agencies or private entities that provide water services at retail or sewer services within the territory of the legislative body. When allocating or making plans for the allocation of available and future resources or services designated for residential use, each public agency or private entity providing water services at retail or sewer services, shall grant a priority for the provision of these available and future resources or services to proposed housing developments that help meet the city's, county's, or city and county's share of the regional housing need for lower income households as identified in the housing element adopted by the legislative body and any amendments made to that element.~~

~~(b) This section is intended to neither enlarge nor diminish the existing authority of a city, county or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water services at retail or sewer services shall not invalidate any action or approval of a development project. The special districts which provide water services at retail or sewer services related to development, as defined in subdivision (c) of Section 56426, are included within this section.~~

~~(c) As used in this section, "water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.~~

~~(d) The Legislature finds and declares that this section shall be applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance.~~

~~SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~